

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:09cr79**

UNITED STATES OF AMERICA,)
)
 Appellee,)
)
 vs.)
)
 PETER W. GOODWIN,)
)
 Appellant.)
 _____)

ORDER

THIS MATTER is before the Court on the Appellant's Notice of Appeal. [Doc. 2].

On May 23, 2009, the Appellant was issued a citation for disorderly conduct within the special territorial jurisdiction of the United States, in violation of 36 C.F.R. §2.34(a)(2). [Doc. 1]. On August 27, 2009, the Appellant was found guilty of the charge by Magistrate Judge Dennis L. Howell and sentenced to six months imprisonment with a fine of \$1,000. [Id.]. The Judgment in a Criminal Case provides that the Appellant shall self-report to the Bureau of Prisons when notified by the United States Marshal. [Id.].

On September 8, 2009, the Appellant timely filed a Notice of Appeal. [Doc. 2]. A defendant may appeal to the district court a conviction for a

misdemeanor tried before a magistrate judge pursuant to 18 U.S.C. §3402 and Federal Rule of Criminal Procedure 58(g)(2)(B). See, e.g., United States v. Irby, 269 Fed.Appx. 246, 247 n.2 (4th Cir. 2008). On such an appeal, however, the appellant is not entitled to a *de novo* trial.

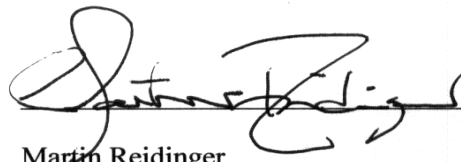
Fed.R.Crim. P. 58(g)(2)(D). Because the Appellant here was on release at the time of conviction and was allowed to self-report to prison, this Court must stay the sentence of imprisonment during the appeal. Fed.R. Crim. P. 38(b)(1); Fed.R.Crim P. 58(g)(3).

The Court will therefore enter a scheduling order for the briefs on appeal.

IT IS, THEREFORE, ORDERED that the Appellant shall file his brief on appeal on or before thirty days from entry of this Order. The Appellee shall file its brief on or before thirty days from the filing of the Appellant's brief.

IT IS FURTHER ORDERED that during the pendency of the appeal, the execution of the sentence of imprisonment is stayed.

Signed: September 9, 2009


Martin Reidinger
United States District Judge

